IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2572 of 2005

1. Shri A.Y.Meshram
age 59 years, Occ. Retired
r/at Shirin Garden, Bldg G-15
Parihar Chowk, Aundh,
Pune 411 007

2. Shri S.P.Hartalkar
age 60 years, Occ. Retired
r/at B/14 Ajinkya C.H.S.Ltd.
Tagore Road,Santacruz (W)
Mumbai 400 054

3. Shri T.Chandrashekhar
age 44 yrs. Occ. IAS Officer,
r/at 101-A, Patilputra CHS Ltd
Four Bungalows,Andheri (W)
Mumbai 400 053

4. Shri Ravindra Shamrao Puranik
age adult, 48 yrs. Occ.
Executive Engineer,
KDMC Kalyan
r/at Navin Asha C.H.S.
Rambaug Lane, No.O
Kalyan (West), Dist. Thane

5. Shri P.M.Bayas
age about 62 yrs. Occ. Retired
I.A.S.Officer
r/at C-3/5 RakshalekhaHsg Scy
Kawade Wadi, Koregaon park,
Pune 411 001

6. Shri Pramod Govindrao Kulkarni
age 44 yrs. Occ. Executive Engineer
M.M.R.D.A.(on deputation)
r/at B/202 Mahaganga C.H.S.Ltd.
Nr. Brahman Sabha, Tilak Road
Dombivli (E) Dist. Thane 421 201

7. Shri Arun Sadashiv Muthal
age 61 yrs. Occ. Retired
r/at Sandhya Shankar Nivas

Namdeo Path, Gogras Wadi,
Dombivli (E) Dist. Thane 421 201

8. Shri G.T.Bandri
age 59 yrs. Occ. IAS Officer
r/at A/3 Gulmohar,
Govt. Residential Quarters
7 Queen's Garden, Pune-1

9. Shri Shree Kant Singh
age 45 yrs. Occ. IAS Officer
r/at Govt.Quarters, Bungalows
No.13, Kopri, Thane (East) ... Petitioners
(Orig. Accused 1 to 9)

V/s

1. Shri Nandkishor Ganesh Joshi,
an adult, occupation Advocate
B-17 Namshree C.H.S. Ltd.
Dr.Rajendra Prasad Road,
Dombivli (East)

2. State of Maharashtra
at the instance of Director General
Anti Corruption Bureau
Maharashtra State, Mumbai

3. Kalyan Dombivli Municipal
Corporation, Kalyan,
District Thane ... Respondents

Shri A.P.Mundargi, Sr.Counsel along with Shri C.K.Pendse for the Petitioners

Shri Ganesh Sovani for Respondent no.1

Shri D.S.Mhaispurkar,APP for State

WITH

CRIMINAL WRIT PETITION NO.2828/2005

Raviraj Chemicals,
a proprietary concern,
through its propreitor
Shri Ravindra Jadhav,
having ofice at Silver Coin,
Saraswat Bank Building,

near Bhanu Nagar,
Bhagat Singh Road,
Dombivli (East)421 201
District Thane ... Petitioner
(Orig. Accused no.10)

V/s

1. State of Maharashtra
(Through Director General,
A.C.B. Mumbai)

2. Municipal Corporation for the city
of Kalyan and Dombivli;
through its Commissioner,
having office at
Shankar Rao Chowk, Kalyan
District Thane

3. Shri Nandkishor Ganesh Joshi,
adult, Occ. Advocate
r/o B/17 Namshree C.H.S. Ltd.
Dr.Rajendra Prasad Road,
Dombivli (E) District Thane .. Respondents

Shri P.K.Dhakephalkar,Sr.Counsel with Shri Mahendra S. Kumtekar for Petitioners

Shri D.S.Mhaispurkar APP for State

WITH

CRI.REVISION APPLICATION NO.171 of 2006

State of Maharashtra .. Applicant

V/s

Nandaksihor G. Joshi ... Respondents

Shri D.S.Mahispurkar,APP for State

Shri Ganesh Sovani for Respondents

CORAM: S.B.MHASE &
S.R.SATHE,JJ.
DATED: 21st Dec.2006

ORAL JUDGMENT :- (Per S.R.SATHE,J.)

1. Being aggrieved by the order passed by the Court of Sessions Judge, Special Court, ACB Kalyan whereby the learned Judge passed order u/s 156(3) of Criminal Procedure Code, the original accused nos.1 to 9 and accused no.10 Raviraj Chemicals, Dombivli, Prop. Ravindra Jadhav have filed the above mentioned Criminal Writ Petitions respectively under Article 226 of the Constitution of India and Section 482 of Criminal Procedure Code for quashing the proceedings in Criminal Special Case NO.5 of 2005. The State of Maharashtra has also challenged the order passed under Section 156(3) by filing Criminal Revision Application No.171 of 2006.

2. Brief facts giving rise to these proceedings are as under :-

One Nandakishor Ganesh Joshi, an elected Councilor representing Ward NO.86 of Kalyan Dombivli Municipal Corporation (hereinafter referred as KDMC for sake of convenience) and who was once elected as a Chairman of Standing Committee KDMC for the year 2000-01 found that right from the year 1995-96 the purchases of chemicals like Bleaching Powder grade II, Liquid Chlorine and Hydrated Lime required for its Baraway purification Centre for purifying water were not in

accordance with procedure and malpractice was followed by the higher officers i.e. Accused nos.1 to 9 who were working at different times as Commissioners or Executive Engineers in KDMC, in tender processing. Though at the time of purchases tenders were invited by giving advertisement in the newspaper, ultimately the purchases were made from selected contractors and the items mentioned above were purchased at much higher price as compared to then prevailing market rates. According to the complainant all this was done by the accused nos.1 to 9 by joining hands with accused no.10 and all of them had conspired for purchase of the above mentioned items from accused no.10 at higher rate. As a result of the purchases of the items at higher price, KDMC was required to spent nearly Rs.44,99,000/- excess amount and thus there was in fact loss of public money. The complainant Nandaksihor Joshi therefore wrote a letter to the Central Vigilance Commissioner, New Delhi, as well as to the Chief Secretary of Government of Maharashtra and requested them to investigate the scam involved in the purchase of above mentioned items at higher price. The ACB Mumbai was also moved. However, they informed the complainant that no case has been made out by the complainant so as to lodge FIR against the officers of KDMC i.e. Accused nos 1 to 9.

According to the complainant even after calling tenders some of tenderer were called for negotiations and that too at different times. Thus complainant felt that present Petitioners have committed offences punishable under Section 13(1)(d) and (ii) of Prevention of Corruption Act 1988 and also under Section 166, 167 read with 120B of IPC. As Police did not take any cognizance of his complaint made to them the complainant Nandakshor Joshi filed a private complaint in the Court of Sessions Judge (Special Court) ABC Kalyan and prayed that appropriate order under Section 156(3) of Criminal Procedure Code be passed.

3. After perusing the complaint and other documents produced by the complainant as well hearing learned Advocate for the complainant he found that KDMC has committed breach of Maharashtra Municipal Account Code. The present Petitioners are responsible for making purchases at higher rate and thereby causing loss to the Corporation as alleged and accused no.10 obtained pecuniary advantage by following corrupt and illegal means. The learned Special Judge, Kalyan therefore under Section 156(3) of Criminal Procedure Code directed the Joint Director ACB Maharashtra State,

Mumbai to register the offence by appointing any competent officer and to investigate into the matter.

4. Being aggrieved by the above mentioned order the accused nos 1 to 9 and accused no.10 have filed the above mentioned two writ petitions and prayed that proceedings before the Special Court, Kalyan be quashed. State of Maharashtra also challenged the said order by filing Criminal Revision Application. From the perusal of the record it appears that this Court (Coram:J.N.Patel and Smt.Roshan Dalvi,JJ) admitted the petitions and directed the ACB only to inquire into the mater and submit its report to the Special Judge and copy of the same before this Court and also directed that further proceedings before the Special Court, Kalyan be stayed. It was further directed that ACB shall not cause arrest of any of the petitioners without seeking permission of this Court.

5. In pursuance of the above mentioned order, ACB carried out open inquiry regarding the alleged corruption and malpractice carried with regard to transaction for purchase of chemicals by KDMC and submitted its report to the Special Court on 6-11-2006.

6. The Additional S.P. ACB, opined in the said report that after investigation of the case it has not transpired that accused nos.1 to 9 misused their powers in collusion with accused no.10 to cause monetary gain to accused no.10 and thereby caused loss of Rs.44,99,000/- to KDMC.

(यांनी मे. रविराज केमिकल्स यांचेशी संगनमत करुन रविराज केमिकल्स यांना आर्थिक लाभ होण्याच्या दप्टिने अधिकाराचा गैरवापर करुन गुन्हेगारी स्वरुपाचे गैरवर्तणुक केली व त्यामुळे कल्याण डोंबिवली महानगरपालिकस रु 44,99,000/-नुकसान झाल्याचे चौकशी दरम्यान आढळून आले नाही)

7. The learned Senior Counsel Mr.A.P.Mundargi as well as learned Senior Counsel Mr.P.K.Dhakephalkar argued before us that complaint filed by the complainant before Special Court is totally misconceived and baseless. The complainant himself was associated with KDMC and was in fact Chairman of Standing Committee for one year. Previously also he had made similar complaints to various authorities and ACB had in fact once carried out investigation in the matter and at that time also they had found that no offense has been committed by the accused as alleged by the complainant. So, there was in fact no necessity for the learned Special Judge even to pass order under

Section 156(3) of Criminal Procedure Code. However, as a result of subsequent order, ACB was in fact directed to re-investigate the matter and even after re-investigation the report is submitted which clearly indicates that there is no substance in the complaint.

8. Both the learned Senior Counsel also submitted that the Petitioners-accused nos.1 to 9 were not working in KDMC at one and the same time, they were working at different times during the period from 1995-96 to 2000-2001. So, it is ridiculous to say that there was conspiracy between them and accused no.10. Besides this every time purchases have been made from the contractors or tenderer whose tender was the lowest. Not only that but for every such transaction approval was given by the Standing Committee. Besides this the aggrieved tenderer at times had filed writ petitions challenging the grant of tender to other tenderer. Writ petitions were filed by Rajdeep Enterprises, SVS Chemicals and those petitions have been dismissed. They also submitted that there may be few instances where other corporations might have purchased some articles at lower rate but that by itself would not be a factor to hold that malpractice was followed in the transaction of purchases by KDMC. They therefore

submitted that petitions be allowed and proceedings before the Special Court, Kalyan be quashed.

9. Mr. Sovani, learned Advocate for the Respondent no.1 submitted that the inquiry or investigation carried out by the ACB is not correct and proper. Even they have also observed that at times the tender process was not carried out and completed in one month as contemplated under statute but it was delayed. When negotiations were carried out with second lowest tenderer the same ought to have been carried out before the committee instead of having discussion in that behalf at the level of Superintending Engineer. He also submitted that Respondent no.1 i.e. Original complaint has given a Chart showing the rates of different articles in question purchased by different Municipal Councils in various years and that will also indicate that articles purchased by KDMC were at a higher rate as compared to then prevailing market rate. He therefore, submitted that there is prima facie material to show that accused persons are involved in the alleged offence and as such the proceedings may not be quashed.

10. From the perusal of the record it is very clear

that in this matter long back in the year 2003 ACB had carried out investigation and then PI, ACB submitted report dated 23-4-2003 wherein it was stated that no offence was disclosed against petitioners accused. It seems that in spite of the said first inquiry/investigation, as a result of the order passed by the Special Judge, the ACB has carried out second time open inquiry in the matter. During the said inquiry, statements of as many as 21 witnesses have been recorded. Not only that but all details with regard to the tenders that were accepted during the period from 1995-96 to 2000-01 by KDMC in respect of purchase of chemicals for Barway purifying Centre have been thoroughly examined by the ACB. They have also noted some of the lacunas in the procedure that was carried out e.g. Though as per Maharashtra Municipal Account Code it is necessary to complete the process of tender within one month, the said rule has not been observed. It is also noticed that when the lowest or second lowest tenderer were called for discussion or negotiations they were not called simultaneously. However, these infirmities or lacunas prima facie only indicate that there were certain irregularities but the said irregularities by themselves are certainly not sufficient to indicate that accused persons are

involved in the alleged offence. In fact there is no prima facie material to indicate that offence as alleged has been committed. It has to be noted that the Petitioners i.e Accused nos 1 to 9 were working with KDMC at different times as Commissioner or Executive Engineers. So, it is difficult to hold that they had any conspiracy and they acted malafide with a view to cause wrongful gain to accused no.10. On the contrary every time tender has been sanctioned to the person whose tender rates were lowest and subsequent approval to it is also given by the standing committee.

11. Though the learned Advocate for the Respondent no.1 the original complainant argued before us that rates granted by KDMC were higher than the prevailing market rate there is no authenticated material on this point. What is more to be noted is even if the rates are higher then also this fact is not sufficient to draw the inference that the accused nos.1 to 9 together acted malafide with a view to cause wrongful gain to accused no.10. It is needless to say that rate of any particular article depends on the quality of the said article, the quantum in which the same is to be purchased, the place at which it is to be purchased, the mode in which the payment is to be made etc. There

is nothing on record to show that articles of same quality and quantity under similar circumstances were purchased by the other Municipal Councils at lower rates as compared to rates at which purchases were made by KDMC. We do find that if the purchases are made in bulk, there is some difference of rates. So, it can not be said that there was any faul play any mischief in the tenders sanctioned by KDMC during the above mentioned period. On the contrary we do find that basic necessary procedure required for purchase of articles has been observed by KDMC and the said rates were approved by the standing committee. At times the tenderer means whose tenders were not passed has also filed writ petitions in the High Court but the same have been dismissed. So,having regard to all these facts on record and the report of ACB wherein they have categorically stated that there is nothing to indicate that accused Nos.1 to 9 in collusion with accused No.10 committed any illegal act or that accused Nos. 1 to 9 misused their powers and thereby caused loss of Rs. 44,99,000/- to KDMC. When such is the position, we are of the considered view that no further action by Police or Special Court is necessary in the said Special Case. It is therefore, necessary to quash the said proceedings that is Criminal Special Case No.5 of 2005

filed before Judge, Kalyan and we quash the same. Hence, both the writ petitions are disposed of in the above terms.

12. In view of the order passed in the above mentioned Criminal Writ Petitions, the Criminal Revision Application No.172 of 2006 also stands disposed of.

(S.R. SATHE,J.) **(S.B. MHASE,J.)**